

REMARKS

By this Amendment, claims 26-30 have been amended, and claims 56-58 have been added. Since claims 1-25 and 31-55 were previously canceled, after entry of this Amendment, claims 26-30 and 56-58 remain pending in this application. Support for the amendments can be found in the originally-filed specification, claims, and drawings, and in the corresponding written description. No new matter is presented.

As an initial matter, Applicant thanks the Examiner for withdrawing the rejections set forth in the previous Final Office Action, dated September 24, 2010, that were based on U.S. Patent No. US 5,337,733 to Bauerfeind et al. ("the Bauerfeind reference"). For the reasons set forth below, Applicant submits that Applicant's claims also are patentably distinguishable from the newly cited reference, U.S. Patent Application Publication No. US 2003/0229332 A1 to Intoccia ("the Intoccia reference"), set forth in the Office Action dated February 10, 2011.

In the Office Action at page 3, claims 26-30 were rejected under 35 U.S.C. § 102(e) as being anticipated by the Intoccia reference. Claim 26 is the sole independent claim, and, as amended, is now directed to "a rigidizable device" comprising, *inter alia*, "an inner element and outer element positioned concentrically around the inner element " and "a plurality of components positioned between the inner and outer elements."

The Intoccia reference relates to devices and methods for removing an object from a body lumen. With reference to FIGS. 3-5 and paragraphs [0031]-[0036], [0050], and [0051], on which the Examiner relies in the Office Action, the Intoccia reference discloses a device 30 having a first catheter 32 and a second catheter 36. The first

catheter 32 includes a fluid lumen 33, through which fluid 11 can be delivered to a body lumen (defined by a duct 15), and a lumen 34 for delivery of inflation fluid to a distal expansible member 31 (e.g. a balloon 31). The second catheter 36 includes a lumen 37 for delivery of inflation fluid to a proximal expansible member 38 (e.g., a balloon 38). See Intoccia paragraphs [0031]-[0033].

In use, the device 30 is inserted into a body duct 15 and the proximal balloon 38 and distal balloon 31 are expanded against the wall of the body duct 15 to secure the position of the first catheter 32 within the duct 15.

In citing the Intoccia reference against claim 26, the Examiner equates the catheter 32 to Applicant's claimed inner element; the body lumen duct 15 to Applicant's claimed outer element; and members 31, 38 and catheter 36 to Applicant's claimed components. The Examiner asserts that the body duct 15 is positioned concentrically around the first catheter 32. See Office Action at page 3.

Applicant disagrees with the Examiner's attempted correlation of the duct 15, which is a part of a patient's body, to the "outer element" recited in claim 26. In particular, Applicant submits that the body duct 15 cannot be properly construed as a part of a "rigidizing mechanism," as the preamble of claim 26 previously recited. Nevertheless, Applicant has amended the preamble of claim 26 to further clarify the statutory class of the claim as relating to an apparatus by reciting "[a] rigidizable device." Accordingly, the body duct 15 itself cannot be properly construed as an outer element of a "rigidizable device," to which claim 26 is directed. While a rigidizable device, as recited in claim 26, may, for example, be inserted into a body lumen, the body lumen itself cannot be considered part of a rigidizable device.

Furthermore, the Intoccia reference itself does not disclose or otherwise suggest that the body duct 15 is part of a device. Rather, the Intoccia reference discloses that a portion of a device 30 is inserted into the duct 15, with at least the balloon 31 being expanded to secure the position of a first catheter 32 within the body lumen.

For at least the above reasons, therefore, independent claim 26 and dependent claims 27-30 are patentably distinguishable from the Intoccia reference. Accordingly, Applicant requests the withdrawal of the Section 102 rejection of the claims based on the Intoccia reference.

Based on the foregoing remarks, Applicant requests the withdrawal of all outstanding claim rejections and the timely allowance of pending claims 26-30, and 56-58. If the Examiner believes a phone call would assist in expediting the prosecution and allowance of this application, the Examiner is invited to telephone the undersigned at 202-292-4556.

Applicant does not necessarily agree with the Office Action's various characterizations and assertions regarding Applicant's claims and the cited art. Unless expressly stated otherwise herein, Applicant declines to subscribe to any such characterizations and/or assertions, and silence regarding the same should not be construed as acquiescence to those characterization and/or assertions.

Please grant any extensions of time required to enter this Amendment and charge any required fees to Deposit Account No. 50-3404.

Respectfully submitted,

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Dated: May 9, 2011

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